

REMARKS

Claims 36-75 are present in the application. Of those claims, claims 36-45 have been withdrawn from consideration as being directed to non-elected subject matter. Thus, claims 46-75 are pending on the merits.

I. Provisional, Non-statutory Obviousness-type Double Patenting Rejection

In the Office Action, claims 46-75 were provisionally rejected based on an allegation of non-statutory, obviousness-type double patenting based on claims 15 and 17-43 of U.S. Patent Application No. 11/123,173 to Gueret ("Gueret '173"). Office Action at 3. Although Applicant does not necessarily agree with the allegation, in order to promote the issuance of a Notice of Allowance for the present application, Applicant has filed a Terminal Disclaimer concurrently herewith that references Gueret '173. Therefore, Applicant respectfully requests reconsideration and withdrawal of the provisional, non-statutory obviousness-type double patenting rejection.

II. Rejection under 35 U.S.C. § 102(b) based on Desnos

Claims 46-62, 64, 65, and 67-75 were rejected under 35 U.S.C. § 102(b) based on U.S. Patent No. 6,174,319 to Desnos ("Desnos"). Office Action at 4. Claim 46 is the only independent claim included in that rejection, and Applicant traverses the rejection of independent claim 46 because Desnos fails to disclose all of the subject matter recited in independent claim 46.

Independent claim 46 is directed to a device for packaging a cosmetic product and recites, *inter alia*, "a container containing a cosmetic product, wherein . . . the

cosmetic product comprises a body care product, excluding depilatory waxes.” The term “depilatory” relates to having the capability to remove hair. American Heritage College Dictionary 373 (3d ed. 2000). Thus, “excluding depilatory waxes” relates to excluding waxes having the capability to remove hair.

Desnos does not disclose “a container containing a cosmetic product, wherein . . . the cosmetic product comprises a body care product, excluding depilatory waxes” (emphasis added), as recited in independent claim 46. As conceded in the rejection statement at p. 4, Desnos discloses an “epilatory wax container” (Abstract). In particular, Desnos relates “to the removal of unwanted hair from the human body by means of a wax composition” (col. 1, ll. 6-9), and further, to “an apparatus for the removal of hair from the body comprising a container of an epilatory wax composition . . .” (Col. 2, ll. 30-31). Thus, in contrast to the subject matter recited in Applicant’s independent claim 46, which recites “excluding depilatory waxes” (emphasis added), Desnos discloses an epilatory wax composition for removal of hair from the body.

For at least the above-outlined reasons, Desnos fails to disclose or render obvious all of the subject matter recited in independent claim 46. Therefore, Applicant respectfully requests reconsideration and withdrawal of the § 102(b) rejection of independent claim 46 based on Desnos, as well as the rejection of claims 47-62, 64, 65, and 67-75, which depend from claim 46.

III. Rejection under 35 U.S.C. § 103(a) based on Desnos

Claims 63 and 66 were rejected under 35 U.S.C. § 103(a) based on Desnos. Office Action at 5. Claims 63 and 66 depend from independent claim 46. Thus, claims 63 and 66 are patentably distinguishable from Desnos for at least the same reasons as independent claim 46. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 63 and 66 under § 103(a) based on Desnos.

IV. Conclusion

For at least the above-outlined reasons, claims 46-75 are allowable. Therefore, Applicant respectfully requests reconsideration of this application, withdrawal of the claim rejections, and allowance of claims 46-75.

If the Examiner believes that a telephone conversation might advance prosecution of this application, the Examiner is cordially invited to call Applicant's undersigned attorney at (404) 653-6559.

Applicant respectfully submits that the Office Action contains a number of assertions concerning a commonly-assigned application, the related art, and the claims. Regardless of whether those assertions are addressed specifically herein, Applicant respectfully declines to automatically subscribe to them.

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Inventor: Jean-Louis H. GUERET
Attorney Docket No.: 05725.1471
Reply to Office Action dated December 24, 2008

Please grant any extensions of time required to enter this Request and charge
any additional required fees to our Deposit Account 06-0916.

Respectfully submitted,

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GARRETT & DUNNER, L.L.P.

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Attachment: Terminal Disclaimer